IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.824 of 2002

Bhupendra Narayan Jha s/o late Shri Baidyanath Jha, resident of village Ghogardiha, PS Ghogardiha, District Madhubani

Versus

1.The State of Bihar through the Commissioner-cum-Secretary, Water Resources Department, Patna
2.The Chief Engineer, Water Resources Department, Darbhanga
3. The Superintending Engineer, West Koshi Canal Circle, Nirmali.

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5 7.11.2008 Heard learned counsel for the petitioner and learned counsel for the State.

Petitioner superannuated from service on 30.11.1991. At that time he was head clerk in the Koshi Project under Irrigation Department in the scale of Rs.1400-2600. In 1997 by Annexure-1 some employees of the department were promoted to super time scale of Rs.1500-2750 and pursuant to that the petitioner filed this writ petition on 15.1.2002 claiming that he should also be promoted to super time scale with effect from 1.3.1990 when his juniors were promoted to the said scale.

One of the issues to be decided in this case was whether the case of the petitioner was considered and not found fit for promotion or whether his service records were not available and, therefore, his claim was kept pending. From the

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counter affidavit, particularly from paragraph 5 it is found that petitioner was not found eligible for promotion because till 1991 when he was in service, there was a requirement of passing the accounts examination for such promotion and petitioner could not pass the said examination. The policy requiring passing of such examination was subsequently revised on 13.2.1995 as appears from Annexure-B to the counter affidavit. In that view of the matter, as explained in paragraph 5 of the counter affidavit one person junior to the petitioner but who was in service till 1995 and retired on 31.1.1996 was given the benefit of circular dated 13.2.1995 and promoted to the super time scale.

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On behalf of the petitioner it was contended that there was already a policy decision as evident from circular dated 9.11.1983, Annexure 1(A) under which person like the petitioner who had crossed the age of 50 on the relevant date could have been exempted from the requirement of passing accounts examination for the purpose of promotion.

A perusal of Annexure 1 (A) shows that the benefit of exemption could have been granted in exercise of discretion considering the service records and other circumstances mentioned in the circular letter dated 9.11.1983. Petitioner has subsequently claimed that in 1988 he filed for exemption but

he is not aware what happened to such a request. The said letter of 1988 has not been annexed. Even if petitioner had made such an application in 1988 he had to pursue the same and if he was aggrieved on account of wrong decision or no decision then he had to move this Court or appropriate authority within a reasonable time. The present writ petition has been filed in the year 2002 on account of alleged discrimination with a junior whose case has been shown to be different because he was in service till 1995 when government issued another policy decision. Such administrative policy decision cannot have retrospective effect and cannot enable retired employees like the petitioner to claim promotion.

In the facts of the case, the writ petition is found to be without any merit. It is dismissed accordingly.

(Shiva Kirti Singh, J.)

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